

Before the State of South Carolina  
Department of Insurance

In the matter of:	)	Order Imposing
	)	Administrative Penalty
Michael Witherspoon	)	
	)	File No.: 100270
204 Land Stone Circle	)	
Irmo, South Carolina 29063-9270.	)	
_____	)	

This matter comes before me pursuant to a Final Order and Decision issued by the Honorable John D. Geathers, South Carolina Administrative Law Judge, on January 19, 2000.

The South Carolina Department of Insurance initiated its action to revoke Michael Witherspoon's resident insurance adjuster's license or, in the alternative, to impose an administrative fine against him, by serving upon him a Letter of Allegation and Notice for an Opportunity for a Public Hearing, as required within S.C. Code Ann. § 38-3-170 (Supp. 1998), both by certified mail, return receipt requested, and by regular mail at 204 Land Stone Circle, Irmo, South Carolina. That letter alleged that Witherspoon failed to notify the Department of a change in his residential address as required by S.C. Code Ann. § 38-47-15 (Supp. 1998). Section 38-47-15 requires an adjuster to notify the department within thirty days of any change in his or her address. Witherspoon subsequently requested a Public Hearing and the Department filed an Agency Transmittal Form with the Administrative Law Judge Division.

On January 18, 2000, a hearing was held before the Honorable John D. Geathers, Administrative Law Judge. Witherspoon appeared *pro se* and the Department was represented by Amelia R. Linder, Assistant General Counsel. On January 19, 2000, Judge Geathers issued his Final Order and Decision (see attached). That Order found that the Department had established by a preponderance of the evidence that Witherspoon had violated S.C. Code § 38-47-15 (Supp. 1998) by failing to notify the department within thirty days of his change in residential address. S.C. Code § 38-47-70 (Supp. 1998) states, "When the director or his designee determines that there has been a violation of this title by an adjuster, upon ten days' notice, he may impose the penalties provided in Section 38-2-10." Section 38-2-10 (2) provides that the director or his designee shall fine a violator \$2,500 or shall suspend or revoke his license, or both. Pursuant to these Code provisions, Judge Geathers ordered the Department to impose a \$500 penalty against Witherspoon.

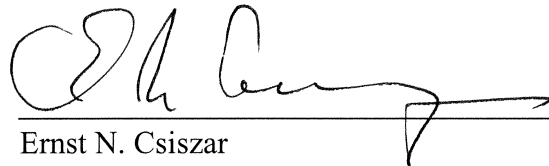
Therefore, in accordance with Administrative Law Judge Geathers' Final Order and Decision, I hereby impose against Witherspoon an administrative penalty in the total amount of \$500. That fine must be paid within ten days of the date of my signature upon this Order Imposing Administrative Penalty. If that total penalty amount is not timely paid, his resident insurance adjuster's license will be revoked without any further disciplinary proceedings.

This administrative disciplinary order is a public record subject to the disclosure requirements of the State of South Carolina's *Freedom of Information Act*, S.C. Code Ann. §§ 30-40-10, *et seq.* (1991 and Supp. 1998). Nothing contained within this administrative disciplinary order should be construed to limit or to deprive any person of any private right of action under the law. Nothing contained within this administrative disciplinary order should be construed to limit, in any manner, the criminal jurisdiction of any law enforcement or judicial officer. Nothing contained within this administrative disciplinary order should be construed to limit the statutory duty, pursuant to S.C. Code Ann. § 38-3-110(4) (Supp. 1998), of the Director of Insurance, exercised either directly or through the Department of Insurance, to "report to the Attorney General or other appropriate law enforcement officials criminal violations of the law relative to the business of insurance or the provisions of this title which he considers necessary to report.

It is, therefore, ordered that Witherspoon shall, within ten days of the date of my signature on this Order Imposing Administrative Penalty, pay through the South Carolina Department of Insurance an administrative penalty in the total amount of \$500.

It is further ordered that a copy of this Consent Order be immediately transmitted to the National Association of Insurance Commissioners for distribution to its member states.

This order becomes effective as of the date of my signature below.

A handwritten signature in black ink, appearing to read "Ernst N. Csiszar", is written over a horizontal line.

Ernst N. Csiszar  
Director

February 1, 2000  
Columbia, South Carolina

A

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW JUDGE DIVISION

South Carolina Department of Insurance, )  
)  
Petitioner, )  
vs. )  
)  
Michael Witherspoon, )  
)  
Respondent. )

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FINAL ORDER AND DECISION

DOCKET NO. 99-ALJ-09-0542-CC

**RECEIVED**  
GENERAL COUNSEL

JAN 21 2000

APPEARANCES: Amelia R. Linder, Esquire  
For Petitioner

Michael Witherspoon, *pro se*

STATE OF SOUTH CAROLINA  
DEPARTMENT OF INSURANCE

STATEMENT OF THE CASE

This matter comes before this tribunal pursuant to S.C. Code Ann. §§ 1-23-600(B) and 38-43-130 (Supp. 1998) upon Respondent Michael Witherspoon's (Respondent) request for a contested case hearing regarding the decision of Petitioner South Carolina Department of Insurance (DOI) to revoke Respondent's resident adjuster's license. Petitioner seeks revocation of Respondent's license for allegedly violating S.C. Code Ann. § 38-47-15 (Supp. 1998) by failing to notify DOI within thirty days of the change of his residence address. A contested case hearing was held January 18, 1999 at the Administrative Law Judge Division, Columbia, South Carolina.

Petitioner established by a preponderance of the evidence that Respondent violated the insurance law at issue. Petitioner's request that Respondent's license be revoked is denied; however, Petitioner's alternative request that a fine of not less than \$500 be imposed on Respondent is granted.

FINDINGS OF FACT

Having carefully considered all testimony, exhibits, and arguments presented at the

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ADMIN. LAW JUDGE DIV.

hearing of this matter, and taking into account the credibility and accuracy of the evidence, I make the following findings of fact by a preponderance of the evidence.

Respondent Michael Witherspoon first applied to DOI for an adjuster's license on September 21, 1992. At that time, Respondent's address was stated as "1000 Watermark Place, Apt. 823, Columbia, SC 29210." DOI approved the application and issued Respondent an adjuster's license.

On July 17, 1997, Respondent submitted to DOI an APPLICATION FOR CONTINUATION OF RESIDENT ADJUSTER LICENSE. At that time, Respondent's address was stated as "10 Thistle Ct., Irmo, SC 29063." DOI approved this application.

On July 8, 1999, DOI mailed an adjuster renewal packet to Respondent at "10 Thistle Ct., Irmo, SC 29063." The packet was returned by the U.S. Postal Service to DOI on July 13, 1999 and was stamped "Return To Sender. Forwarding Time Expired."

DOI sent a duplicate renewal packet to Respondent at "204 Land Stone Circle, Irmo, SC 29063," the forwarding address provided by the U.S. Postal Service. The practice of the U.S. Postal Service, pursuant to Section F, 5.0 of the Domestic Mail Manual, is to forward mail for twelve months and then to return the mail to the sender with the new address attached for the next six months.

Respondent changed his residence address and failed to notify DOI within thirty days of the change. Notably, Respondent's August 31, 1999 renewal application indicates "204 Land Stone Circle, Irmo SC 29063" as his address.

### **CONCLUSIONS OF LAW AND DISCUSSION**

Petitioner alleges that Respondent violated S.C. Code Ann. § 38-47-15 (Supp. 1998). Section 38-47-15 requires the following: "[w]hen an individual applies for an adjuster's license he shall supply the department his business and residence address. *The adjuster shall notify the department within thirty days of any change in these addresses.*" S.C. Code Ann. § 38-47-15 (Supp. 1998) (emphasis added). The statute clearly states that each licensed adjuster must notify DOI within thirty days of a change of residence address.

As it relates to penalties, S.C. Code Ann. § 38-47-80 (Supp. 1998) provides as follows:

“[w]hen the director or his designee determines after investigation that there has been a violation of this title by an adjuster, upon ten days’ notice, he may impose the penalties provided in Section 38-2-10.” Section 38-2-10(2) states, in part:

If the violator is a person, other than an insurer or a health maintenance organization, licensed by the director or his designee in this State, the director or his designee shall (a) fine the violator in an amount not to exceed two thousand five hundred dollars, or (b) suspend or revoke the license of the person, or both. . . .

S.C. Code Ann. § 38-2-10(2) (Supp. 1998). Reading sections 38-47-15, 38-47-80 and 38-2-10 together, DOI has express authority to revoke or suspend an adjuster’s license *and* impose a fine up to \$2,500 if an adjuster licensed in this State fails to notify DOI of a change of residence address within thirty days.

In civil cases, generally, the burden of proof rests upon the party who asserts the affirmative of an issue. 29 AM. JUR. 2d Evidence § 127 (1994); ALEX SANDERS, et al., SOUTH CAROLINA TRIAL HANDBOOK § 9:3 Party With Burden, Civil Cases (1994). DOI is the party asserting the affirmative in this case; therefore, DOI must prove by a preponderance of the evidence that Respondent violated S.C. Code Ann. § 38-47-15 (Supp. 1998). See Anonymous v. State Board of Medical Examiners, 329 S.C. 371, 769 S.E.2d 17 (1998) (setting forth standard of proof as preponderance of the evidence).<sup>1</sup>

In the present case, on July 17, 1997, Respondent submitted to DOI an “APPLICATION FOR CONTINUATION OF RESIDENT ADJUSTER LICENSE” that stated Respondent’s address as “10 Thistle Ct., Irmo, SC 29063.” On July 8, 1999, DOI, logically, mailed an adjuster renewal packet to Respondent at that address. On July 13, 1999, the packet was returned by the

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<sup>1</sup> The preponderance of the evidence means “[t]he greater weight of the evidence” or “superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.” BLACK’S LAW DICTIONARY 1201 (7th ed. 1999). “The preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in the mind the belief that what is sought to be proved is more likely true than not true.” SANDERS, *supra*, § 9:5 Quantum of Evidence in Civil Cases (1994), citing Frazier v. Frazier, 228 S.C. 149, 89 S.E.2d 225 (1955). The weight and credibility assigned to evidence presented at the hearing of a matter is within the province of the trier of fact. See South Carolina Cable Television Ass’n v. Southern Bell Tel. and Tel. Co., 308 S.C. 216, 417 S.E.2d 586 (1992).

U.S. Postal Service to DOI; the envelope was stamped "Return To Sender. Forwarding Time Expired," and a forwarding address was attached. DOI sent a duplicate renewal packet to Respondent at the forwarding address, which was "204 Land Stone Circle, Irmo, SC 29063." In response, Respondent submitted a August 31, 1999 renewal application that indicated "204 Land Stone Circle, Irmo SC 29063" as his residence address.

The U.S. Postal Service regulations incorporate by reference the Domestic Mail Manual, which is a looseleaf document published each year in January and July, unless determined otherwise by the U.S. Postal Service. 39 C.F.R. §111.1 (July 1, 1998). Under Section F, 5.0 of the Domestic Mail Manual, the U.S. Postal Service forwards mail for twelve months and then returns the mail to the sender with the forwarding address attached for six months thereafter. Without evidence to the contrary, it is presumed that the U.S. Postal Service handled Respondent's mail in this manner after his change of address from "10 Thistle Ct." to "204 Land Stone Circle."

Accordingly, the facts in this case support that Respondent submitted a change of address to the U.S. Postal Service at least twelve months prior to July 13, 1999, which is the date on which the renewal packet was returned to DOI. Consistent with the U.S. Postal Service forwarding policy, the renewal packet was returned to DOI with the correct forwarding address of Respondent, as evidenced by the residence address contained in Respondent's subsequent August 31, 1999 renewal application. Respondent failed to notify DOI of this change of address. In fact, Respondent failed to provide any evidence that he notified DOI of a change of address between the dates he submitted his July 17, 1997 application and his August 31, 1999 renewal application.

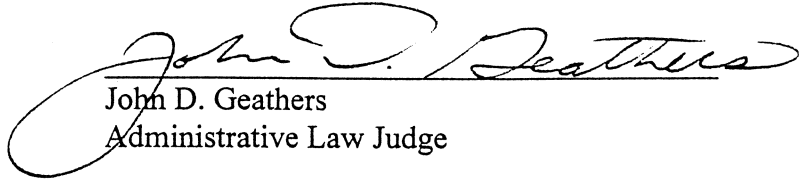
I find that DOI has proven, by a preponderance of the evidence, that Respondent failed to notify it of his change of residence address within thirty days, as required under S.C. Code Ann. § 38-47-15. Based on the facts in this case, I conclude that the appropriate penalty is to impose a fine of \$500 against Respondent.

#### **ORDER**

**IT IS THEREFORE ORDERED** that Petitioner's request that Respondent's adjuster's license be revoked for violating S.C. Code Ann. § 38-47-15 is denied, and Petitioner shall

impose a \$500 penalty against Respondent.

**AND IT IS SO ORDERED.**

  
John D. Geathers  
Administrative Law Judge

January 19, 2000  
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the party(ies) of their attorney(s).

This 19<sup>th</sup> day of January 2000

BY: Janet Wallace  
Judicial Law Clerk